

RBS and RUS, USDA

§ 4290.160

§ 4290.140 Approval of initial Management Expenses.

A RBIC must have its Management Expenses approved by the Secretary at the time it is licensed. (See § 4290.520 for the definition of Management Expenses.)

§ 4290.150 Management and ownership diversity requirement.

(a) *Diversity requirement.* You must have diversity between management and ownership in order to be licensed as a RBIC and to maintain your license. To establish diversity, you must meet the requirements in paragraphs (b) and (c) of this section.

(b) *Percentage ownership requirement.* No Person or group of Persons who are Affiliates of one another may own or control, directly or indirectly, more than 70 percent of your Regulatory Capital or your Leverageable Capital.

(c) *Non-affiliation requirement.* At least 30 percent of your Regulatory Capital and Leverageable Capital must be owned and controlled by Persons unaffiliated with your management and unaffiliated with each other, and whose investments are significant in dollar and percentage terms as determined by the Secretary. Such Persons must not be your Associates (except for their status as your shareholders, limited partners or members) and must not Control, be Controlled by, or be under Common Control with any of your Associates. A single “acceptable” Institutional Investor may be substituted for two or three of the three investors who are otherwise required. The following Institutional Investors are “acceptable” for this purpose:

(1) Entities whose overall activities are regulated and periodically examined by State, Federal or other governmental authorities satisfactory to the Secretary;

(2) Entities listed on the New York Stock Exchange;

(3) Entities that are publicly-traded and that meet both the minimum numerical listing standards and the corporate governance listing standards of the New York Stock Exchange;

(4) Public or private employee pension funds;

(5) Trusts, foundations, or endowments, but only if exempt from Federal income taxation; and

(6) Other Institutional Investors satisfactory to the Secretary.

(d) *Voting requirement.* The investors relied upon to satisfy the diversity requirement may not delegate their voting rights to any Person who is your Associate, or who Controls, is Controlled by, or is under Common Control with any of your Associates, without prior approval by the Secretary.

(e) *Requirement to maintain diversity.* You must maintain management-ownership diversity while you are a RBIC. If, at any time, you no longer have the required management-ownership diversity, you must:

(1) Notify the Secretary within 10 days; and

(2) Re-establish diversity within six months after loss of diversity.

§ 4290.160 Special rules for Partnership RBICs and LLC RBICs.

(a) *Entity General Partner or Entity Managing Member.* (1) A general partner of a Partnership RBIC which is a corporation, limited liability company or partnership (an “Entity General Partner”), or a managing member of an LLC RBIC which is a corporation, limited liability company, or partnership (an “Entity Managing Member”) shall be organized under State law solely for the purpose of serving as the general partner or managing member of one or more RBICs, and shall be organized for profit.

(2) The Secretary must approve any person who will serve as an officer, director, manager, or general partner of the Entity General Partner or Entity Managing Member and of an entity that Controls the Entity General Partner or Entity Managing Member. This provision must be stated in an Entity General Partner’s or Entity Managing Member’s articles of incorporation or charter and bylaws if a corporation, operating agreement if a limited liability company, or partnership agreement if a partnership.

(3) An Entity General Partner or Entity Managing Member is subject to the same examination and reporting requirements as a RBIC under sections